

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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MICHAEL AND ELIZABETH SMITH,	)	DOCKET NO.: PT-1997-36
	)	
Appellants,	)	
	)	
-vs-	)	
	)	
THE DEPARTMENT OF REVENUE	)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
Respondent.	)	<u>FOR JUDICIAL REVIEW</u>

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The above-entitled appeal was heard on the 4th day of August, 1998 in Thompson Falls, Montana in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

The taxpayers, Elizabeth and Michael Smith, presented testimony in support of their appeal. The Department of Revenue (DOR), represented by appraisers Diane Hill and William Haines, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, and the Board then took the appeal under advisement.

The Board, having fully considered the testimony, exhibits, and all things and matters presented to it by all parties, finds and concludes as follows:

**FINDINGS OF FACT**

1. Due, proper, and sufficient notice was given of

this matter and of the time and place of the hearing. All parties were afforded the opportunity to present evidence, oral and documentary.

2. The taxpayers are the owners of the property which is the subject of this appeal and which is described as:

Block C, W1/2 Lots 9-15 PL 9A, Prongua Addition, Section 4, Township 21 North, Range 24 West, Hot Springs, Sanders County, State of Montana, Land and Improvements thereon. (DOR ID# 25343)

3. The DOR appraised the subject property for the 1997 tax year at a value of \$8,625 for the land and \$57,820 for the improvements.

4. On September 20, 1996, the taxpayers appealed to the Sanders County Tax Appeal Board, stating:

A new home two blocks away is valued the same as ours. The home cost (5) five times more for most of the construction. The house has 2-1/2 baths, 2 kitchens and twice as much room. We have 1 bath, 1 kitchen, and half and the space.

6. In its December 4, 1997 decision, the county board disapproved the appeal stating:

To be adjusted according to DOR. Letter dated 11-18-97 changing the base value of property.

7. The taxpayers appealed the county board decision to this Board on June 25, 1997, stating:

There are a number of properties in Hot Springs that cost 2 to 3 times as much as ours to build. At least two of these homes have full basements and are at least \$30,000 in value higher than ours. We pay more than most and we are only at 85% completion. We paid less than \$30,000 to build our house and garage.

### **TAXPAYERS- CONTENTIONS**

The taxpayers submitted information reflecting comparisons they had made of their house with two other houses.

The taxpayers testified the houses selected were not comparable to theirs but rather were chosen to illustrate the inequity of the value placed upon their property. The taxpayers stated the construction materials used to build their house were less expensive than materials used in the two houses selected which were of better quality and larger size. The value of one house was less than and the other was the same as the taxpayers= property.

The taxpayers testified their house is not complete, with closets, doors, and trim yet to be finished. The taxpayers testified their house is in clay--~~At~~ moves@--and used their local post office as an example of the expense involved when a structure has to be stabilized when constructed on land of similar composition. Because of the soil composition, they testified they were unable to construct a house with a basement. Such a location, they contend, negatively impacts the value of their house.

The taxpayers testified that in 1991 they purchased the lot plus a trailer and shed on the property for \$15,000.

One year later they built a garage and in 1994 began construction of the house. In August of 1995 they sold the

trailer to a friend for \$7,000 and stated that was likely a price lower than they might have received in the market place.

The taxpayers testified their total costs have approximated \$30,000. They have contracted some of the labor and construction but have done most of the work themselves. The taxpayers stated they agree with the DOR that the completion factor of 85% is fair. They requested a total value of \$42,445, including the land.

#### **DEPARTMENT OF REVENUE'S CONTENTIONS**

The DOR submitted photographs of the subject property that showed the house and the garage. (DOR Ex A) The DOR testified the house had been determined to be a Grade 4, on a scale of 1 to 9, with a 5 being an average house in Montana.

A Grade 4 is designated by the DOR to be a ~~A~~Fair Quality Residence®; and a Grade 4 is illustrated in DOR Exhibit B and a description of this grade is contained in Exhibit C (pages 42-8 and 42-9 of the department's Montana Appraisal Manual).

The grade of the subject property was adjusted from a Grade 5 following an AB-26 property review. An 85% completion factor was applied.

The subject property was valued using the cost approach, with a grade adjustment, depreciation of 3%, and a completion percentage of 85%.(DOR Ex G) To the replacement cost new less depreciation calculation, an economic condition

factor of 108% was applied.

The DOR placed a condition, desirability, utility (CDU) factor of average on the property. The DOR testified that utility of the house due to lack of closets, etc. might not be average nor the condition might not be average due to some moisture damage; however, normally, the CDU is not adjusted until construction has been completed. The DOR testified the depreciation that would be applied as a result of a lower CDU has been incorporated in the percentage complete of 85% and the lower grade.

### DISCUSSION

In the calculation of a value for the subject property, the DOR determined the replacement cost of the improvements, then judged the improvements were 85% complete and 97% good (3% depreciation). To that result, an economic condition factor (ECF) of 108% was applied.

The ECF is a market adjustment factor. The International Association of Assessing Officers (IAAO) states:

Market adjustment factors are often required to adjust values obtained from the cost approach to the market. These adjustments should be applied by type of property and area based on sales ratio studies or other market analyses. Accurate cost schedules, condition ratings, and depreciation schedules will minimize the need for market adjustment factors. (IAAO, 1990, Property Appraisal and Assessment Administration, pages 311-312)(Emphasis applied)

Land values are not considered, because the factor is only applied to improvements valued by the cost approach.

An ECF for a neighborhood is derived from sales; but there was no evidence or testimony from the DOR to indicate the ECF applied was developed from sales of properties of the

same type, that is, properties not considered to be 100% complete. It follows, therefore, that the ECF ought to be removed.

The Board finds that the rest of the evidence presented by the DOR supported values determined.

For the foregoing reasons, the Board finds the decision of the Sanders County Tax Appeal Board is affirmed in part and modified in part.

#### CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. '15-2-302 MCA

2. '15-8-111, MCA. **Assessment -- market value standard -- exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

3. It is true, as a general rule, that the appraisal of the Department of Revenue appraisal is presumed to be correct and that the taxpayer must overcome this presumption.

The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).

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**ORDER**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Sanders County by the assessor of that county at the 1997 tax year value of \$8,625 for the land and at an amount for the improvements calculated using a completion factor of 85% and removal of the economic condition factor of 108%.

Dated this 28th day of September, 1998.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

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PATRICK E. MCKELVEY, Chairman

( S E A L )

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GREGORY A. THORNQUIST, Member

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LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.